

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

DYLAN CORRAL,

Defendant.

CASE NO. 2:22-cr-00048-JCC-TLF

FINDINGS AND
RECOMMENDATION ON
DEFENDANT'S ABSENCE FROM
HEARING WITH PROPOSED
FINDINGS OF FACT PURSUANT TO
FED. R. CRIM. P. 59 AND 18 U.S.C.
18 U.S.C. §§ 4241, 4247

The District Court has referred, under Fed. R. Crim. P. 59, the hearing to determine whether defendant is presently competent, and whether he should be committed for competency restoration. Dkt. 113. The District Court reviews the Magistrate Judge's report and findings under a *de novo* standard of review if there are Constitutional issues to be resolved. *United States v. Raddatz*, 447 U.S. 667, 683

FINDINGS AND RECOMMENDATION ON
DEFENDANT'S ABSENCE FROM HEARING WITH
PROPOSED FINDINGS OF FACT PURSUANT TO
FED. R. CRIM. P. 59 AND 18 U.S.C. 18 U.S.C. §§ 4241,
4247 - 1

(1980); *U.S. v. Rivera-Guerrero*, 377 F.3d 1064, 1070-1071 (9th Cir. 2004).

A. PROCEDURAL BACKGROUND

On September 21, 2022, the Honorable John C. Coughenour ordered a competency evaluation under 18 U.S.C. §§ 4241(b), 4247(b)–(c). Dkt. 17. The Court ordered a hearing, which was held on June 5, 2023 (after two hearings were scheduled in May, but required re-setting because of a scheduling conflict, and an illness). Dkt. 55, 56, 61, 65, 66.

After the Court ordered the first competency evaluation, Dr. Tiffany Smith, a forensic psychologist at the U.S. Bureau of Prisons' Metropolitan Detention Center in Los Angeles, reviewed Mr. Corral's records and considered other information such as phone calls that were being monitored by the Bureau of Prisons. Dkt. 33, Ext. A; Dkt. 27 (Report of Dr. Smith – admitted into evidence as Ex. B during the hearing); Dkt. 75 at 1-2.

Mr. Corral declined to participate in the competency evaluation with Dr. Smith; she relied on a review of records, and on other observations of him. Dkt. 27, at 1-2. Among the diagnoses that Dr. Smith gave for Mr. Corral was a diagnosis of antisocial personality disorder, and a provisional diagnosis of bipolar 1 disorder. Dkt 27, at 9-10; Dkt. 75 at 4.

At the close of the first competency hearing, both the prosecution and the defense argued that the defendant was, at that time, presently competent to stand trial. The Magistrate Judge issued Findings and Recommendations that Mr. Corral was competent at that time, and the District Court, after de novo review, agreed. Dkt. 75, 86, 87.

FINDINGS AND RECOMMENDATION ON
DEFENDANT'S ABSENCE FROM HEARING WITH
PROPOSED FINDINGS OF FACT PURSUANT TO
FED. R. CRIM. P. 59 AND 18 U.S.C. 18 U.S.C. §§ 4241,
4247 - 2

1 Mr. Corral filed two motions to remove his previous attorney, Mr. Beevers; the
2 first was denied, but after additional developments, the second motion was granted by
3 the Court on August 29, 2023. Dkt. 69, 72, 75, 76, 77, 82, 85, 86, 87, 88, 89, 90, 92, 93,
4 95, 96, 97, 100, 102, 103, 107. Substitution of counsel was effectuated and his current
5 attorney, Ms. Danica Mazenko, was appointed on September 8, 2023 under the CJA
6 process. Dkt. 103, 107. Mr. Corral filed another motion to substitute counsel on
7 September 27, 2023. Dkt. 112, 112-1.

8 The Court referred the motion to the Magistrate Judge, and a status conference
9 was held on October 10, 2023. Dkt. 121. Counsel for the defense expressed during the
10 hearing that she was concerned about whether Mr. Corral could assist in his defense.
11 The Court held an in camera portion of the hearing, to protect attorney-client privilege,
12 and filed Findings and Recommendation that the Court should defer any decision on the
13 defendant's motion to substitute counsel. Dkt. 122. The Magistrate Judge also
14 recommended that another competency hearing should be conducted. Dkt. 122. The
15 Magistrate Judge recommended that no decision should be made on the motion to
16 substitute counsel until the defendant's competency to stand trial was again reviewed.
17 Dkt. 122.

18 This Findings and Recommendation was approved and adopted by the Hon.
19 John C. Coughenour, and Judge Coughenour referred the second competency hearing
20 to the Magistrate Judge. Dkt. 139. In addition, after the defendant refused to be
21 transported to the U.S. Bureau of Prisons' Metropolitan Detention Center in Los
22 Angeles, for evaluation, Judge Coughenour ordered that a new psychiatrist or clinical
23 psychologist would be appointed to conduct a pre-hearing psychiatric or psychological

1 examination, to evaluate Mr. Corral's mental health and to issue a report under 18
2 U.S.C. § 4241(b). Dkt.149. The Court also vacated the trial date, and issued an order
3 excluding from the speedy trial deadline the time for proceedings necessary for a
4 second competency hearing. Dkt. 152.

6 **B. PROPOSED FINDINGS OF FACT**

7 Defendant Dylan Corral stands charged under 18 U.S.C. § 876(c) with mailing
8 interstate threats. Dkt. 1.

9 He was found to be competent to stand trial on June 21, 2023. Dkt. 86. On order
10 of the Court for another competency hearing, a new expert -- Dr. Charles E. Saldanha,
11 MD -- has evaluated him, and on March 22, 2024, the Government submitted Dr.
12 Saldanha's report for filing (under seal). Dkt. 158, 161. The Magistrate Judge opened
13 the hearing on the issue of competency on April 1, 2024. At the outset of the hearing,
14 the Court was informed that Mr. Corral would not agree to be transported from the
15 Sacramento County Jail to the United States District Court in Sacramento for the
16 hearing. Dkt. 164, Transcript of Competency/Evidentiary Hearing, at 3:15-23. The Court
17 invited counsel to provide input, and then the Court requested testimony from the
18 Deputy United States Marshal who had gone to the Sacramento County Jail and had
19 talked with Mr. Corral. Dkt. 164, p. 6-8.

20 Deputy United States Marshal Jason Garcia stated that he went to the third floor
21 unit of the Sacramento County Jail, to pick up Mr. Corral for transportation to the United
22 States District Court. Dkt. 164, at 5:9-11. Approximately 20 minutes later, Deputy
23 Marshal Garcia received information that Mr. Corral refused to go. Dkt. 164, at 5:13-14.

24 FINDINGS AND RECOMMENDATION ON
DEFENDANT'S ABSENCE FROM HEARING WITH
PROPOSED FINDINGS OF FACT PURSUANT TO
FED. R. CRIM. P. 59 AND 18 U.S.C. 18 U.S.C. §§ 4241,
4247 - 4

1 Deputy Marshal Garcia and two other unit officers went to the cell, and Deputy
2 Marshal Garcia had a conversation with Mr. Corral. Dkt. 164, at 5:14-21. Deputy
3 Marshal Garcia stated that Mr. Corral at first seemed nervous. Dkt 164, 5:17-18. He
4 observed Mr. Corral appeared to have been concerned because Deputy Marshal Garcia
5 was carrying chains, and had the other officers with him – after the Deputy Marshal
6 introduced himself, Mr. Corral told Deputy Marshal Garcia that he refused to go to the
7 Federal Court. Dkt. 164, at 5:22-23.

8 Deputy Marshal Garcia stated that Mr. Corral said the Deputy Marshal should
9 “tell the Judge I don’t need to be there;” Mr. Corral indicated to Deputy Marshal Garcia
10 that he was “invoking his right to protest”. Dkt. 164, at 6:2-7. Mr. Corral sat down on a
11 table and appeared to become more relaxed. *Id.*

12 When asked for clarification, Deputy Marshal Garcia stated that Mr. Corral said it
13 did not matter if he attended the hearing, because he believed the doctor would say
14 what he had to say regardless. Dkt. 164, at 7-5. Mr. Corral also stated that he did not
15 agree with the proceeding. Dkt. 164, at 7:8-9.

16 Later, after he left the Sacramento County Jail, Deputy Marshal Garcia inquired
17 whether it would be possible to connect Mr. Corral with the Federal District Court’s
18 hearing by videoconference, or by phone. Dkt. 164, 16-24. He asked the officers at the
19 Sacramento County Jail to confirm with Mr. Corral whether he would participate by
20 videoconference or by phone if such a connection could be accomplished. *Id.* After the
21 officers confirmed that they could set up a videoconference or phone connection, and
22 they asked Mr. Corral whether he would agree to participate by electronic means, Mr.
23 Corral also declined to participate in that way. *Id.*

1 After Deputy Marshal Garcia had provided this testimony, the Court inquired
2 whether defense counsel, or Dr. Charles E. Saldanha, MD, the psychiatrist that
3 evaluated Mr. Corral, and was prepared to testify, would consider meeting with Mr.
4 Corral. Dkt. 164, p. 8-10. The Court asked the parties to give their perspectives. *Id.*

5 After a recess, the Court in the afternoon requested that Deputy Marshal Garcia
6 meet again with Mr. Corral and attempt to transport him voluntarily to attend the hearing
7 in the afternoon. The Court advised Deputy Marshal Garcia that it would be helpful to
8 give Mr. Corral information that if he wanted to testify, he had a right to do that in this
9 hearing. Dkt. 164, at 23:18-24:9. The Court advised Deputy Marshal Garcia that he
10 should not advise Mr. Corral of rights in the same way a law enforcement officer might
11 advise of Miranda warnings and ask whether the defendant wants to waive those rights;
12 although the Court had informed Mr. Corral during the previous competency hearing
13 that he had a right to testify, that hearing had taken place many months before; the
14 Court requested Deputy Marshal Garcia to remind Mr. Corral of the right to testify. *Id.*

15 When the Court reconvened at 1:50 pm on April 1, 2024, Deputy Marshal Garcia
16 testified that he went a second time to the Sacramento County Jail. Dkt. 164, at 26:5-24
17 He went to the cell where Mr. Corral was being held, and told Mr. Corral the Court was
18 ordering him to come to the hearing, and he would have the right and opportunity to
19 testify. *Id.* Mr. Corral asked whether the hearing was over, and Deputy Marshal Garcia
20 told him he did not know, because he was not present during all of the morning
21 proceedings. *Id.* Mr. Corral again stated that he understands his rights and would not
22 come to the hearing. *Id.*

C. LEGAL ANALYSIS AND RECOMMENDATION

“At any time after the commencement of a prosecution for an offense and prior to the sentencing,” a court may order a hearing to determine the mental competency of a defendant. 18 U.S.C. § 4241(a). Upon the parties’ motion or *sua sponte* if there is reasonable cause to question the defendant’s competency, the Court must hold such a hearing. 18 U.S.C. § 4241(a).

The Court must determine “by a preponderance of the evidence” whether “the defendant is presently suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense.” 18 U.S.C. § 4241(d).

If the Court finds the defendant is not competent, the Court must “commit the defendant to the custody of the Attorney General” for hospitalization and treatment to restore competency. 18 U.S.C. § 4241(d).

A defendant is considered competent if they have:

- a rational and factual understanding concerning the nature and object of the proceedings;
- the ability to consult with their lawyer; and
- the ability to assist in preparation of their defense.

Drope v. Missouri, 420 U.S. 162, 171 (1975).

When a defendant requests substitution of appointed counsel and there are also issues raised about whether the defendant is competent to stand trial, the court may consider whether the alleged mental disease or defect is connected to the difficulties

1 with their attorney. *See United States v. Telles*, 18 F. 4th 290, 296-300 (9th Cir. 2021).

2 To make this determination, the Court considers the following factors, any one of
3 which – standing alone – may in some circumstances be sufficient to prove
4 incompetence to stand trial: evidence of the defendant’s irrational behavior; defendant’s
5 demeanor in the courtroom; prior medical opinions concerning the defendant’s
6 competence to stand trial. *Drope*, at 180; *Miles v. Stainer*, 108 F.3d 1109, 1112 (9th Cir.
7 1997).

8 Defendant has a non-waivable right to have counsel during competency
9 proceedings. *U.S. v. Kowalczyk*, 805 F.3d 847 (9th Cir. 2015).

10 The defendant has a constitutional right to be present during a competency
11 hearing. *Sturgis v. Goldsmith*, 796 F.3d 1103, 1108-1109 (9th Cir. 1986). In a criminal
12 case, any waiver of the right to be present must be knowing, voluntary, and intelligent.
13 *See Campbell v. Wood*, 18 F.3d 662, 671-72 (9th Cir. 1994). Concerning the due
14 process right to be present, there are some situations where the defendant’s absence
15 “may so undermine the integrity of the trial process that the error will necessarily fall
16 within that category of cases requiring automatic reversal; this would be structural error
17 and cannot be considered under any harmless error analysis. *Hegler v. Borg*, 50 F.3d
18 1472, 1476 (9th Cir. 1995). In the context of a competency hearing, the Ninth Circuit
19 has held that harmless error would apply. *Sturgis v. Goldsmith*, at 1109. The analysis of
20 the defendant’s right to be present may be different under the Sixth Amendment
21 Confrontation Clause. “A hearing solely on competency does not involve guilt or
22 innocence. It is instead a non-adversarial proceeding. . . ‘for the limited, neutral purpose
23 of determining [a defendant’s] competency.’” *Sturgis v. Goldsmith*, 796 F.2d at 1111

24 FINDINGS AND RECOMMENDATION ON
DEFENDANT’S ABSENCE FROM HEARING WITH
PROPOSED FINDINGS OF FACT PURSUANT TO
FED. R. CRIM. P. 59 AND 18 U.S.C. 18 U.S.C. §§ 4241,
4247 - 8

(Wallace, J. concurring in part and dissenting in part) (quoting, *Estelle v. Smith*, 451 U.S. 454, 465 (1981)).

A defendant has a constitutional and statutory right to testify at a pretrial competency hearing, and only the defendant may waive it – counsel may not waive this right on behalf of their client. *U.S. v. Gillenwater*, 717 F.3d 1070 (9th Cir. 2013). Although a defendant may waive their right to testify, if the defendant's competency is at issue, their capacity to knowingly, and intentionally, waive the right to testify is uncertain. See *Gillenwater*, at 1086, n. 8; see, *U.S. v. Gerrans*, 477 F. Supp. 3d 1035, 1057-1058 (ND Cal. 2020) (colloquy regarding whether the defendant understands the right to testify in a competency hearing, and has decided to waive the right). In a criminal trial, the defendant is presumed to assent to his attorney's tactical decision not to have him testify. *US v. Joelson*, 7 F.3d 174, 177 (9th Cir. 1993). The Court does not have a duty to advise the defendant of their right to testify in a criminal trial, and any waiver of the right to testify must be knowing and voluntary – but it does not need to be explicit. *U.S. v. Pino-Noriega*, 189 F.3d 1089, 1094 (9th Cir. 1999). The Ninth Circuit has not decided whether a denial of the defendant's constitutional right to testify in a competency hearing would be structural error, or whether it would be subject to harmless error analysis. *U.S. v. Gillenwater*, 717 F.3d at 1083-1084.

A United States Magistrate Judge is not given authority to conclusively determine a disputed question that would be dispositive of an issue of constitutional magnitude in a felony criminal matter. *U.S. v. Riverera-Guerrero*, 377 F.3d 1064, 1070-1071 (9th Cir. 2004). The District Court Judge must engage in de novo review of the Magistrate Judge's proposed findings and recommendations, to comply with the restrictions

mandated by Congress in 28 U.S.C. § 636(b)(1)(A), and (b)(3). *Id*; see also, *United States v. Weisberger*, 951 F.2d 392, 398 (D.C. Cir. 1991) (District Court reviewed an order of a Magistrate Judge – an order that was outside the jurisdiction of the Magistrate Judge -- and the record showed this was de novo review; therefore, any error was harmless). Therefore, the Magistrate Judge would not have jurisdiction to issue an order under these circumstances, without first submitting findings of fact and recommendations and obtaining an order from the District Judge concerning the process for assessment of whether Mr. Corral has capacity to waive his rights, either expressly or by implication, or whether to conduct a competency hearing in abstentia.

In this case, the defendant refused to be transported to the U.S. District Court. Despite two attempts by the Deputy United States Marshal to bring Mr. Corral voluntarily to the hearing, Mr. Corral declined to voluntarily be transported. He stated that he was exercising his right to protest, and that he disagreed with the proceeding.

Although there was a previous finding that Mr. Corral was competent to stand trial in 2023, another evaluation has taken place. Dkt 161, sealed. It is unclear whether Mr. Corral would currently be competent for the proceedings against him, including the competency hearing. Bringing him to Court involuntarily, in chains, appears to the Court to have the potential to exacerbate his mental health condition and symptoms, and the Court was not in a position to be able to evaluate whether he had the capacity to knowingly and intentionally waive his right to testify or his right to be present.

Because the waiver of these statutory and constitutional rights is an issue of constitutional significance, and because it is crucial for the Court to accurately assess Mr. Corral's competency, the Court therefore recommends that a neutral third-party

FINDINGS AND RECOMMENDATION ON
DEFENDANT'S ABSENCE FROM HEARING WITH
PROPOSED FINDINGS OF FACT PURSUANT TO
FED. R. CRIM. P. 59 AND 18 U.S.C. 18 U.S.C. §§ 4241,
4247 - 10

1 defense attorney should be appointed to consult with Mr. Corral at the Sacramento
2 County Jail, along with a psychiatrist or clinical psychologist (other than the two experts
3 who have already evaluated him and filed their reports with the Court) appointed by the
4 Court to determine whether Mr. Corral is able to knowingly and intentionally waive his
5 right to be present and waive his right to testify at this specific hearing. If it is determined
6 that he has capacity to waive these rights, then the third-party defense counsel
7 (appointed only for this purpose) may obtain a waiver from Mr. Corral, in writing or orally
8 by recording his waiver on a cell phone or by other electronic means. In the absence of
9 an express waiver, the Court would potentially be able to consider whether Mr. Corral
10 waives his rights by implication.

11 The third party psychiatrist or clinical psychologist, and the third-party criminal
12 defense counsel would then be called to the hearing by the Court as witnesses to testify
13 regarding what has occurred. At that point, the Court would consider whether Mr. Corral
14 possesses the ability to knowingly and intentionally waive his rights. If the Court finds
15 the record supports a finding that Mr. Corral's waives the right to counsel and right to be
16 present, the proceeding may be held in his absence.

17 In addition, the Court could explore whether it is possible to conduct the
18 competency hearing in the Sacramento County Jail; this would resolve the involuntary
19 transportation problem, and a hearing at the jail would remove the issue of his right to
20 be present.

21 CONCLUSION

22 The Court should decline to rule at this time on defendant's motion to substitute
23 counsel, because of the issues concerning Mr. Corral's ability to rationally assist

counsel. The Court should explore the issue of whether Mr. Corral has the ability to knowingly, voluntarily, and intentionally waive his right to be present at the competency hearing, and the issue of whether Mr. Corral has the ability to knowingly, voluntarily, and intentionally waive his right to testify at the competency hearing. This could be done by appointing a psychiatrist or clinical psychologist to evaluate Mr. Corral and advise the Court for this limited purpose, along with appointing a criminal defense attorney to consult with and advise Mr. Corral, and advise the Court, for this limited purpose. In addition, the Court could explore whether the Sacramento County Jail has sufficiently secure and appropriate facilities for holding a competency hearing at that facility, where the defendant could be present during the hearing, thus allowing him to be present and an assessment of his ability to exercise -- or to waive -- his right to testify, would be considered on the record.

Pursuant to 28 U.S.C. § 636(b)(1), (b)(3) and Fed. R. Crim. P. 59, the parties shall have fourteen (14) days from service of this Report to file written objections. See *also* United States District Court for the Eastern District of California Local Rule of Criminal Procedure 430.1(j).

The Magistrate Judge's Report and Recommendation will be reviewed *de novo*. *U.S. v. Rivera-Guerrero*.

Failure to file objections may result in a waiver of those objections for purposes of de novo review by the district judge, see 28 U.S.C. § 636(b)(1)(C), and may result in a waiver of those objections for purposes of appeal. See *Thomas v. Arn*, 474 U.S. 140, 142 (1985); *Miranda v. Anchondo*, 684 F.3d 844, 848 (9th Cir. 2012) (citations omitted).

1 Objections are due within 14 days after service of these Findings and
2 Recommendations.

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4 Dated this 3rd day of April, 2024.

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6 Theresa L. Fricke
7 United States Magistrate Judge
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